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From: María Cecilia Santos <maria.santos@infinigenrenewables.com>
Sent: Monday, December 23, 2024 9:09 PM
To: Comentarios <comentarios@jrsp.pr.gov>
Subject: Comments to Proposed Regulation for the Evaluation and Approval of Agreements between Electric Service Companies

December 23, 2024

VIA EMAIL: comentarios@energia.pr.gov

PUERTO RICO ENERGY BUREAU

Attn: Edison Avilés-Deliz – Chairman
Lillian Mateo Santos – Associate Commissioner
Ferdinand A. Ramos Soegaard – Associate Commissioner
Sylvia Ugarte Araujo – Associate Commissioner

Re: Comments to the Proposed Regulation for the Evaluation and Approval Agreements with Electric Power Service Companies

Dear Commissioners:

On November 22, 2024, the Puerto Rico Energy Bureau ("***PREB***") issued a resolution under docket No. MI-2020-0014 (the "***Resolution***") publishing a revised draft of the proposed Regulation for the Evaluation and Approval of Agreements between Electric Service Companies (the "***Proposed Regulation***"). The PREB had initiated the process to adopt the Proposed Regulation pursuant to a resolution issued on October 19, 2020 under the same docket. Pursuant to the Resolution, interested parties are entitled to provide comments to the Proposed Regulation within thirty (30) days of publication.[1]

The undersigned, Infinigen Renewables LLC, a Puerto Rico limited liability company ("***Infinigen***"), is the parent company of several subsidiaries that develop, own, operate or provider services to renewable energy facilities in Puerto Rico. Several of Infinigen's subsidiaries will be subject to the provisions of the Proposed Regulation. Among Infinigen's subsidiaries are Horizon Energy LLC, which own and operates a 10MW solar-power generation facility in Salinas, Puerto Rico, Oriana Energy LLC, which own and operates a 50MW solar-power generation facility in Isabela, Puerto Rico, and YFN Yabucoa Solar, LLC, which is in the process of developing a 32.1MW solar-power generation facility in Yabucoa, Puerto Rico. Based on this context and our expertise, we appreciate the opportunity to provide the comments discussed herein.

Intersection with Ongoing Competitive Procurement Procedures

First and foremost, we believe the Proposed Regulation should clarify how the processes

[1] The 30th after publication of the resolution was Sunday, December 22, 2024. Since the due date was a Sunday, the period expires on the following business day pursuant to Article 29(b) of the Puerto Rico Civil Code.

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described therein will intersect with competitive procurement processes. The Proposed Regulation seems to require power purchase agreements ("***PPAs***") to be submitted for approval after a party has been awarded a contract in a competitive process, but prior to its execution. For the reasons stated herein, we believe this approval would be unnecessary.

The procurement of renewable energy sources and energy storage by PREPA is being executed currently in six tranches (each a "***Tranche***"), in accordance with the Procurement Plan approved by PREB (the "***Procurement Plan***")[2] approved under the Integrated Resource Plan (the "***IRP***")[3]. The requests for proposals for the third and fourth Tranches included a draft of the Power Purchase and Operating Agreement ("***PPOA***") to be executed with awardees of renewable energy generation projects and Energy Storage Services Agreement ("***ESSA***") to be executed with the awardees of or battery energy storage projects. Since the agreements that will be executed under the ongoing procurement processes will be in form drafted by PREB, they should be compliant with the requirements for approval under the Proposed Regulation from the beginning. The changes made to the agreements during the procurement and negotiation process (which should not be material, as hereinafter explained) should not cause the agreements to fail those requirements, since the changes are reviewed and ultimately approved by PREB. Requiring agreements to be submitted for approval under the Proposed Regulation would be duplicative and would result in unnecessary delays in the procurement process.

In light of the foregoing, we suggest that the Proposed Regulation be modified so that PPAs between PREPA and third parties, when executed under a competitive procurement process, do not require approval under the Proposed Regulation.

Definition of "Non-substantial changes"

As mentioned previously, the requests for proposals for Tranche 3 and Tranche 4 included drafts of the agreement that would be executed between PREPA and the selected awardees. Proponents were required to submit a redline to the applicable draft, only to include project-specific details. The instructions specifically stated that material terms and conditions are non-negotiable. However, the term "material" is not defined in the requests for proposals.

The Proposed Regulation should include guidelines for permissible contractual modifications within the Procurement Plan. The guidelines should provide a definition of "material" changes, a definition of "project-specific details" and should allow for a clear distinction between both. This would provide transparency and consistency for developers participating in these structured RFPs.

Requirement of Competitive Procurement

[2] Approved under that certain Resolution and Order dated December 8, 2020 under docket no. NEPR-MI-2020-0012.
[3] Approved under that certain Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan dated August 24, 2020 under docket no. CEPR-AP-2018-0001.

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Section 4.01 of the Proposed Regulation requires PREPA to select third parties for Power Purchase Agreements pursuant to Regulation 8815 and, at a minimum, through competitive procurements procedures. This appears to be consistent with the current requirements of the Procurement Plan, the IRP and PREPA's governing act. Since the requirement for procurement by competitive procedures is already included elsewhere, including such requirement in the Proposed Regulation is duplicative and could be counterproductive. If PREB and other relevant stakeholders were to determine, in the future, that competitive procurement is not essential or appropriate for the procurement of renewable energy, the Proposed Regulation would need to be amended to allow for non-competitive procedures.

Greater transparency will be essential if competitive procurement will continue to be required for contracting of renewable energy and battery storage resources. The Proposed Regulation should call for clear and precise selection criteria to be published and should prioritize projects that provide clear benefits for the grid and consumers. This would promote equitable participation and ensure the projects with the greatest impact are selected.

Moreover, the Proposed Regulation should consider procedures for the submission of proposals through alternate procedures. Currently, the timing for the issuance of competitive procurement (in the form of Tranches) is uncertain. Significant investments are made in the preliminary development of these projects, and the risk associated to those investments increases with the uncertainty of the timeline for the project to come to fruition. Providing developers the ability to submit proposals through alternate procedures will allow developers to present their projects when the project has achieved the required maturity. This would reduce the risk currently associated with renewable energy projects in Puerto Rico and would facilitate future investment.

Simplification of Procedures

PPAs between PREPA and third parties are currently subject to the requirements of PREPA's procurement procedures, including but not limited to Regulation 8815. If the Proposed Regulation were approved as drafted, PPAs would also be subject to the requirements set forth therein. This framework, where PPAs need to be approved under two separate regulations, would be confusing and would likely lead developers and other stakeholders to error. Simplifying the procedures for the approval of PPAs would reduce delays that can jeopardize the financial viability of renewable energy projects.

Above, we suggested that PPAs between PREPA and third parties be excluded from the scope of the Proposed Regulation. In the alternative, to avoid inconsistencies between the Proposed Regulation and Regulation 8815, any sections applicable to PPAs between PREPA and third parties could be included as amendment to Regulation 8815, instead of the Proposed Regulation. The Proposed Regulation should include a reference to the relevant sections.

In any case, the regulation that will set forth the process for approval of the PPAs should include shorter timelines and streamlined reviews.

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Compliance with Integrated Resource Plan

Section 3.01(C) of the Proposed Regulation requires all applications for review and approval to include a Statement of Compliance with the Integrated Resource Plan. Clear criteria for demonstrating such compliance should be provided in the Proposed Regulation. This would enable developers to align their projects more effectively with Puerto Rico's energy policy goals and regulatory priorities. Furthermore, clarity on the PREB's expectations with respect to the required Statement of Compliance would facilitate the drafting, review and approval of such documents, avoiding delays in the approval process.

Promotion of Priority Projects

In our view, PREB should prioritize the projects that would have the most significant impact to achieve the goals set forth in the IRP, and the private sector should be incentivized to pursue such projects. Below is a list of several projects we believe should be facilitated:

- The integration of energy storage systems within PPAs should be explicitly addressed in the regulation, emphasizing their importance in stabilizing the grid, improving reliability, and reducing energy costs. Moreover, a specific classification for large-scale solar and battery projects exceeding 10 MW should be established. This classification would reflect their unique contributions to grid stability, reliability, and their alignment with the IRP.
- The regulation should allow flexibility to accommodate emerging technologies, such as advanced storage systems or hybrid solar-battery configurations, without the need for extensive procedural requirements. This would foster innovation and align with evolving industry trends.
- Incentives for large-scale projects, such as expedited processes or reduced interconnection fees for projects exceeding a defined capacity threshold (e.g., 20 MW), would encourage the development of impactful renewable energy and storage solutions.

Interconnection Processes

In our experience, the process for completion of interconnection studies and for the completion of works required in connection therewith has become a significant delay-causing factor. We have also noted that there appear to be no applicable regulations or established guidelines to drive these processes. These processes should be standardized, with defined timelines for technical reviews, approvals and execution of relevant contracts. Regulating these processes would prevent delays that could hinder the development of renewable energy projects. Since these processes will affect many of the agreements contemplated in the Proposed Regulation, it seems appropriate to address these processes as part of the Proposed Regulation.

Establishment of Advisory Committee

Establishing a permanent advisory committee composed of developers, communities, and technical experts would provide ongoing feedback on regulatory implementation and leverage stakeholder expertise to enhance policy effectiveness.

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We appreciate the opportunity to provide these comments and look forward to collaborating with the PREB to establish an efficient regulatory framework that supports Puerto Rico's transition to renewable energy and storage solutions.

Cordially,

María Cecilia Santos
General Counsel
Infinigen Renewables LLC
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